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(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.153(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

Subpart Q [Reserved]

Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

§ 217.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port within Outer Continental Shelf blocks NK 19-04 6525 and NK 19-04 6575, which

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are located at approximately 42°28'09" N. lat and 70°36'22" W. long.

§ 217.171 Effective dates.

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.

[76 FR 35996, June 21, 2011]

§ 217.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.177 of this chapter, the Holder of the Letter of Authorization (hereinafter “Neptune”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.170(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in § 217.170(a) is limited to the following species and is limited to Level B Harassment:

(1) Mysticetes:

(i) North Atlantic right whale (*Eubalaena glacialis*)—120 (an average of 24 annually).

(ii) Fin whale (*Balaenoptera physalus*)—145 (an average of 29 annually).

(iii) Humpback whale (*Megaptera novaeangliae*)—390 (an average of 78 annually).

(iv) Minke whale (*Balaenoptera acutorostrata*)—90 (an average of 18 annually).

(v) Sei whale (*Balaenoptera borealis*)—60 (an average of 12 annually).

(2) Odontocetes:

(i) Long-finned pilot whale (*Globicephala melas*)—595 (an average of 119 annually).

(ii) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—1,935 (an average of 387 annually).

(iii) Bottlenose dolphin (*Tursiops truncatus*)—50 (an average of 10 annually).

(iv) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually).

(v) Risso's dolphin (*Grampus griseus*)—100 (an average of 20 annually).

(vi) Killer whale (*Orcinus orca*)—100 (an average of 20 annually).